



CALIFORNIA FARM BUREAU FEDERATION

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January 21, 2011

Chairman Phil Isenberg and Members of the Council
Delta Stewardship Council
650 Capitol Mall
Sacramento, CA 95814

Re: Delta Watermaster – Reasonable Use and Agricultural Water Use Efficiency
January 27-28 Meeting – Agenda Item No. 9

Mr. Chairman and Members of the Council:

The California Farm Bureau Federation (“Farm Bureau”) has reviewed the white paper prepared by the Delta Watermaster on the subject of agricultural water use efficiency and the reasonable use doctrine, scheduled to be presented to the Council at its meeting on January 27-28, 2011. Farm Bureau was also attendant at its presentation to the State Water Resources Control Board on January 19, 2011, and presented brief verbal comments on its substance and context at that time. We respectfully present the following written comments to the Council for its consideration of the Delta Watermaster’s submission, and urge you to provide better focus for the Delta Watermaster as it may assist the Council in its purposes.

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources. As such, Farm Bureau has long been involved in policy processes related to its aim of securing and protecting an affordable and reliable supply of water for farmers and ranchers, and has most recently committed substantial resources to processes such as Delta Vision and the Bay-Delta Conservation Plan (“BDCP”).

Farm Bureau is supportive of identifying opportunities for increased efficiencies in water use, across the spectrum of beneficial uses. In a time of increasing supply and demand imbalances, driven by California's continuing population pressures as well as expanding policy commitments to instream uses, water must be used wisely and for maximum effect. California's farmers and ranchers have a continuing role to play in the struggle for greater water use efficiency, as do urban users and proponents of environmental needs. As I have stated previously to the Council, farmers and ranchers are justifiably proud of their record over the past 40 years, as more and more crops move to efficient water systems and methodologies at the same time California retains its position as the nation's top agricultural producer.

Notwithstanding the importance of water use efficiency as a continuing goal for all users, however, the Delta Watermaster's white paper is misplaced for the following reasons:

1. The Delta Watermaster Misapprehends His Statutory Authority.

The Delta Watermaster, authorized by Water Code section 85230, has authority in relation to conditions and diversions within the Delta. As a practical matter, it is difficult to explain to our diverse membership – including, for example, farmers and ranchers in places like Modoc and Imperial counties – just why the Delta Watermaster should be calling for a summit on “reasonable use” and water use efficiency as it relates to them, calling for the commitment of general enforcement resources on this issue, or even why he should be authoring white papers on statewide policy. Nothing about the Delta Watermaster's statutory authority or the legislative intent in the 2010 creation of this position, including the Watermaster's charge to submit “regular reports” under Water Code section 85230, suggests such an authority-at-large.

2. The Delta Watermaster's Focus Is One-Dimensional.

At the same time that the white paper overreaches with statewide ambition, it is also incomplete in terms of its limited focus on agriculture. Even to the extent the Delta Watermaster wishes to examine reasonable use within his geographic authority, any inquiry is incomplete without visiting the entire spectrum of beneficial uses. The constitutional requirements found within Article X, Section 2 are a test against which any use of water must stand – including environmental and M&I uses – and an inquiry as to whether any one category or type of use is “reasonable” is hollow unless balanced against other uses. It would itself be unreasonable, for example, to require farmers and ranchers to adopt a costly new technology for a marginal and incremental water savings, while the efficacy of large-volume dam releases for fisheries restoration goes unexamined for actual positive effect.

3. “Reasonable” Use Does Not Require “Most Efficient” Use.

As stated above, irrigation efficiency is a constant goal for California's farmers and

ranchers, and in most cases is directly in their financial interest. Increased efficiencies tend to manifest themselves incrementally, however, as technology becomes available and market conditions justify their use. It is not always possible to use the most efficient technology or method, and the caselaw interpreting Article X, Section 2 does not require so. Moreover, no reading of the California Constitution's enjoinder to reasonable and non-wasteful water use would justify some of the suggestions in the Delta Watermaster's white paper, such as identification of "approved" crop types.

4. "Reasonable Use" Requires Case-by-Case Analysis.

The Delta Watermaster has identified enforcement of the reasonable use doctrine as "reactive", and this is because the California Supreme Court has required a case-by-case inquiry on the subject. Hard and fast rules on the use of agricultural water – or any type of water use – must navigate the contours of Article X, Section 2. In the case of agricultural water use, those contours depend upon climate, weather, water source, soil type, market conditions and any number of other variables. The white paper perhaps asks too much in this regard, to the extent it would seek substantial enforcement resources up front to prospectively identify proper water use against the diversity of the agricultural landscape, or to vet water use efficiency "addendums" attached to all Statements of Diversion and Use which individually detail on-farm management practices.

5. The Delta Watermaster Largely Ignores Other Institutions and Processes.

The white paper was apparently formulated without reference to ongoing and very effective efforts within the agricultural industry to keep increasing irrigation efficiencies available to California's farmers and ranchers. Correctly, the white paper references recent enactments directed at agricultural water management planning, applicable to the agricultural water suppliers which serve the majority of California's agricultural landscape. The Delta Watermaster does not do a very good job, however, of detailing the numerous institutions and processes which provide technical assistance – and grant money – to farmers and ranchers for agricultural water use efficiency. These include local irrigation districts, the Department of Water Resources, the U.S. Bureau of Reclamation, the Natural Resources Conservation Service and local resource conservation districts. They also include work ongoing at UC Cooperative Extension and its extensive outreach to individual farmers on the subject, as well as the work of irrigation experts at UC Davis, Fresno State and CalPoly, who are constantly in search of locally cost effective measures to improve water use efficiency. The Delta Watermaster is apparently even only marginally aware of CIMIS, the California Irrigation Management Information System maintained by DWR's Office of Water Use Efficiency, a basic and widely-used tool which California farmers use to estimate crop water use for efficient irrigation scheduling.

6. The Delta Watermaster Did Not Involve Agricultural Stakeholders.

Perhaps the greatest flaw in the white paper is that it was formulated as a lawyer's piece, with too much attention paid to the legal background on the subject of reasonable use, and too little paid to in-field practices. This could have been avoided by substantially involving California's farmers and ranchers. After all, farmers and ranchers are sensitive to water use because it costs them money, and they tend to be the first to recognize and embrace opportunities for conservation. The field is the cutting edge on this subject, and the Delta Watermaster should probably have started there.

If the Delta Watermaster wishes to help drive technical innovations in on-farm water use efficiency, either within or outside of his geographic purview, we would recommend that he engage in the many voluntary processes that are calculated to deploy irrigation techniques which farmers and ranchers are incentivized to adopt. This is a better policy vector than an additional overlay of command-and-control regulation and bureaucratic workload, which would not only be a much less precise means of addressing the policy issue, but also probably fiscally imprudent in a time in which the range and depth of California's governmental services are facing serious scrutiny. In the meantime, Farm Bureau looks forward to continuing engagement on the subject of water use efficiency, its relationship to the reasonable use doctrine, and the practices of California's tremendously productive farmers and ranchers. We also look forward to working with both the Council and the Delta Watermaster on the many pressing issues that are before us all.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Scheuring', with a stylized flourish at the end.

Christian C. Scheuring
Attorney

CCS/ph

cc: Charles Hoppin, Chairman State Water Resources Control Board